

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ISO New England Inc.

Docket No. ER19-1428-001

STATEMENT OF CHAIRMAN CHATTERJEE

(August 8, 2019)

1. On August 5, 2019, ISO New England's proposed revisions to its Transmission, Markets and Services Tariff (Tariff) to implement an inventoried energy program in the Capacity Commitment Periods associated with the 14th and 15th Forward Capacity Auctions (FCA 14 and FCA 15, respectively) to compensate resources for maintaining inventoried energy during the winter months of 2023-2024 and 2024-2025 became effective by operation of law because the Commission lacked quorum.¹
2. If the Commission does not act on a filing made pursuant to Federal Power Act (FPA) section 205² within the 60-day period established therein because the Commission lacks a quorum, FPA section 205(g)(1)(B) requires each Commissioner to "add to the record of the Commission a written statement explaining the views of the Commissioner with respect to the change."³ As I explain below, I would have voted to accept the proposed Tariff revisions.
3. The instant filing arose from an earlier proceeding related to ISO New England's request to retain Mystic Units 8 and 9, two retiring generating units, for the 2022-2023 and 2023-2024 winter periods to maintain fuel security.⁴ In support of its request, ISO New England pointed to a series of studies that showed (1) a high level of operational risk, under a variety of scenarios, associated with the retirement of Mystic Units 8 and 9 and the Everett Marine Terminal which is the only fuel source for the Mystic Units, and (2) that retirement of those units would lead to the depletion of operating reserves and load shedding.⁵

1 Notice of Filing Taking Effect by Operation of Law (issued Aug. 6, 2019).

2 16 U.S.C. § 824d (2012).

3 *Id.*

4 ISO New England, Petition for Waiver, Docket No. ER18-1509-000, at P 3 (filed May 2, 2018).

5 *Id.*

4. On July 2, 2018, pursuant to its authority under FPA section 206, the Commission directed ISO New England to either (1) submit interim Tariff revisions that provide for the filing of a short-term, cost-of-service agreement to address demonstrated fuel security concerns and submit permanent Tariff revisions reflecting improvements to its market design to better address regional fuel security concerns or, (2) show cause as to why the Tariff remains just and reasonable absent those filings.⁶

5. ISO New England submitted a short-term cost-of-service agreement on August 31, 2018.⁷ The Tariff revisions filed included provisions allowing the ISO to retain resources for fuel security reasons; provisions for a short-term, cost-of-service agreement for resources retained for fuel security reasons; and provisions regarding how resources retained for fuel security reasons would be treated in the Forward Capacity Market. Relevant here, the ISO's proposal treated resources retained for fuel security reasons as price-takers in the Forward Capacity Auction. ISO New England acknowledged that the price-taker approach does not appropriately compensate resources that provide both resource adequacy and fuel security.⁸ However, the ISO explained that a full market-based solution to that problem would be very challenging to design, and, therefore, the ISO could not implement such a solution in time for the 13th Forward Capacity Auction.⁹ ISO New England instead committed to work with stakeholders to identify an alternative that could be applied for FCA 14 and 15 in conjunction with its efforts to continue to develop longer-term market solutions to the region's fuel security challenges.¹⁰ ISO New England stated that one of the ideas it planned to explore was an incremental payment for resources that can help the region meet its fuel security objectives.¹¹

6. The inventoried energy program is the result of that commitment.¹² ISO New England's proposed voluntary program has five components: (1) two-settlement structure; (2) forward rate; (3) spot rate; (4) trigger conditions; and (5) maximum duration.¹³ The two-settlement structure allows participants to elect to participate in either the forward and spot market components of the program or just the spot market

6 *ISO New England Inc.*, 164 FERC ¶ 61,003, at PP 49, 55 (2018).

7 The Commission accepted the Tariff revisions on December 3, 2018. *ISO New England Inc.*, 165 FERC ¶ 61,202 (2018) (Chatterjee, Chairman, dissenting in part).

8 ISO New England Transmittal at 4, citing ISO New England Inc. Compliance Filing, Docket Nos. EL18-182-000 and ER18-2364-000 (filed August 31, 2018).

9 *Id.*

10 *Id.*

11 *Id.*

12 ISO New England Transmittal at 4.

component.¹⁴ ISO New England estimates representative program costs of between \$102 and \$148 million per year, which corresponds to roughly 1.2 to 1.8 million MWh of inventoried energy sold forward and maintained for each Inventoried Energy Day.¹⁵

7. ISO New England's proposed Tariff revisions are intended to incentivize eligible resources to maintain greater inventoried energy and to deter resources that provide winter energy security from pursuing retirement, which will help ISO New England address the region's energy security issues over the winters of 2023-2024 and 2024-2025 while the ISO develops a more comprehensive market-based program.¹⁶ ISO New England explains that the potential lack of inventoried energy available to be converted to electric energy during extended cold spells is a significant element contributing to the region's winter energy security concerns.¹⁷ ISO New England, through this program, will directly compensate resources that maintain inventoried energy instead of converting it to electricity and thereby reducing the inventory necessary to ensure the resource's availability during cold weather periods.¹⁸ ISO New England emphasizes that its relatively simple proposal will allow resources that improve energy security to forecast potential revenue from the program when making retirement decisions, thereby reducing the likelihood that such resources exit the market or that ISO New England retains them through out-of-market actions.¹⁹

8. Under the proposed program, qualifying resources may make both forward and spot sales of "inventoried energy."²⁰ ISO New England's proposal includes both conditions for how an "Inventoried Energy Day" is triggered and eligibility requirements for resources that wish to participate in the program to ensure that inventoried energy can be converted to electric energy when needed. Specifically, a resource is eligible if it satisfies the following eligibility conditions: (1) its inventory can be converted to electric energy at ISO New England's direction; (2) such conversion reduces the amount of electric energy the resource can produce in the future; and (3) the market participant can

13 *Id.* at 9-14.

14 *Id.* at 9-10.

15 *Id.* at 18-19.

16 *Id.* at 5-9.

17 *Id.* at 15.

18 *Id.*

19 *Id.* at 5.

20 Inventoried energy is fuel or potential energy that a resource can convert to electric energy at ISO New England's direction. *Id.* at 8.

measure its inventoried energy and report it on a daily basis.²¹ These eligibility conditions allow ISO New England to compensate all resources that provide inventoried energy, regardless of fuel type.²²

9. Parties supporting the program contend that the program appropriately recognizes the value of resources that can maintain inventoried energy, is a step in the right direction towards addressing winter reliability in New England, and is a reasonable, short-term, fuel-neutral solution. For example, FirstLight states that the inventoried energy program is superior to the previous winter reliability program. FirstLight supports the program's objective to extend eligibility to all inventoried fuels and permit resources seeking forward certainty to support fuel arrangements.²³ Although other supporters acknowledge that there may be a better market design for such a program, they still assert that the Commission should approve the program because it provides reasonable interim compensation, which can serve as a bridge to development of the longer-term market solution.²⁴ Calpine and Vistra believe the forward component of the program is key to winter fuel security, because it incentivizes market participants to take the necessary steps to achieve fuel security, including procuring an adequate amount of fuel and fully optimizing their existing fuel infrastructure.²⁵

10. Parties opposed to the program argue that, among other things, it will be difficult to measure the program's success, the program is not a market mechanism, the costs of the program are too high, there are less expensive alternatives, the program may conflict with other ISO New England programs, and the program includes flawed assumptions. For instance, Clean Energy Advocates argue that charges associated with the program are not just and reasonable because ISO New England has not demonstrated that the benefits justify the costs.²⁶ The Massachusetts Attorney General notes that the previous winter reliability programs had significantly lower costs despite a similar objective to improve

21 *Id.* at 14-15.

22 ISO New England Filing, Testimony of Dr. Christopher Geissler at 23. ISO New England explains that oil, coal, nuclear, biomass, and refuse generators generally are eligible to participate. In addition, other facilities that meet the eligibility requirements, including natural gas resources, hydro and pumped-storage generators, electric storage facilities, and demand response resources may participate. External resources, solar, wind, and settlement-only resources generally are not permitted to participate in the program. ISO New England Transmittal at 15-16.

23 FirstLight Comments at 1, 3, 5.

24 Brookfield Comments at 1; Calpine and Vistra Comments at 1, 5-6; FirstLight Comments at 1-3.

25 Calpine and Vistra Comments at 5-6.

winter energy security.²⁷ Public Citizen and the Maine Public Utilities Commission argue that the program is not just and reasonable because of its dueling incentives with Pay-for-Performance and unclear need following the Commission's approval of Pay-for-Performance and Competitive Auctions with Sponsored Policy Resources (CASPR).²⁸ Similarly, the Maine Public Utilities Commission states that ISO New England appears to be seeking to retain resources that were expected to retire as a result of Pay-for-Performance.²⁹

11. I would have voted to accept the proposed Tariff revisions as a just and reasonable short-term solution to help compensate resources that provide winter energy security and improve reliability while ISO New England develops a long-term market solution. The Commission must balance competing interests when evaluating whether a rate is just and reasonable.³⁰ In addition, it is well-settled that the entity filing a proposal need only demonstrate that the proposed revisions are just and reasonable, not that the proposal is the most just and reasonable proposal.³¹ While some parties argue that ISO New England's previous winter reliability programs are less expensive and may be more effective than the proposal in this proceeding, those programs are not the subject of this proceeding and are not before the Commission. In addition, the inventoried energy program is aimed at broader concerns than the prior winter reliability programs. ISO New England recently published a detailed discussion paper in conjunction with its efforts to develop the longer-term, market-based solution in which it explained, "the ISO-administered wholesale electricity markets, in their current form, may not provide

26 Clean Energy Advocates Protest at 12-13.

27 Massachusetts Attorney General Protest at 12-13.

28 Maine Public Utilities Commission Protest at 7; Public Citizen April 15, 2019 Protest at 2.

29 Maine Public Utilities Commission Protest at 7.

30 *Wisconsin Pub. Power Inc. v. FERC*, 493 F.3d 239, 262 (D.C. Cir. 2007) (per curiam) (quoting *Federal Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 603 (1944)).

31 *PJM Interconnection, L.L.C.*, 151 FERC ¶ 61,208, at P 49, 174 & n.153 (2015), *reh'g denied*, 155 FERC ¶ 61,157 (2016), *aff'd sub nom. Advanced Energy Management Alliance v. FERC*, 860 F.3d 656 (D.C. Cir. 2017) (citing *Cities of Bethany, et al. v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984); *Louisville Gas and Elec. Co.*, 114 FERC ¶ 61,282, at P 29 (2006) (just and reasonable standard under the FPA is not so rigid as to limit rates to a "best rate" or "most efficient rate" standard; rather, a range of alternative approaches often may be just and reasonable), *reh'g denied, E. ON U.S. LLC*, 116 FERC ¶ 61,020 (2006)).

sufficient incentives for resource owners to make additional investments in energy supply arrangements – even when such investments would be cost-effective and reduce potential reliability risks.”³² The paper dubs this the “misaligned incentives for energy supply arrangements” problem,³³ and I believe this is a serious concern.

12. I would have found that ISO New England’s proposal reasonably balances concerns about maintaining reliability against the concerns raised by parties opposed to the program. In particular, the program will help ISO New England address winter energy security for the winters of 2023-2024 and 2024-2025, in light of the misaligned incentives in the market, while the ISO completes development of a long-term market solution. I agree that the forward component of the program will provide market participants with an incentive to procure sufficient fuel and optimize their fuel infrastructure. In addition, as ISO New England explains, the incentives this program provides should complement other existing incentive structures, such as Pay-for-Performance.³⁴ Moreover, this program aims to ameliorate the misaligned incentives issue that the fuel security cost-of-service Tariff provisions did not resolve, and which still exists under Pay-for-Performance.

13. I note that, given the lack of quorum at the time of the statutory deadline for Commission action on this proposal, I was unable to fully discuss the complex issues involved in the proposal with all of my fellow Commissioners. I was open to discussions with my colleagues regarding their positions, and would have thoughtfully considered their arguments. To the extent any of those discussions raised new issues for my consideration, I would have carefully considered those matters and incorporated them into my decision-making process.

Neil Chatterjee
Chairman

32 ISO New England Answer at 7-8, citing (citing ISO New England Discussion Paper, “Energy Security Improvements,” April 2019, available at https://www.iso-ne.com/static-assets/documents/2019/04/a00_iso_discussion_paper_energy_security_improvements.pdf at 11).

33 *Id.*

34 ISO New England Deficiency Letter Response at 11-12.